THE HON'BLE SRI JUSTIE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.A.No. 231 of 2006

Date: 10.07.2006

Between:

Dr. S. Panduranga Vithal.

…. Appellant

and

1. Sri Venkateswara University, Tirupati, rep.,by its Registrar and another.

… Respondents.

THE HON'BLE SRI JUSTIE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.A.No. 231 of 2006

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order in W.P.No.6414 of 2006 dated 29.06.2005, whereby the respondents were directed to take an appropriate decision depending upon the workload and continue him in service for every academic year, the petitioner has preferred this appeal.

The petitioner is a Post Graduate in Sanskrit having completed his M.A. in the year 1982 securing 2nd rank in the respondent-University. According to the petitioner, he joined as a teaching assistant in the 1st respondent-University in 1983-84 on consolidated pay. He was periodically informed by the 1st respondent, at the beginning of each academic year, regarding the need of teaching staff. On this basis his services were engaged during the years 1983-84 to 1985-86. The petitioner was awarded Ph.D degree by the 1st respondent-University in the year 1989 and during the period 1990 to 1995 he was asked to take M.A. classes. From 1995-96 he was appointed as a teaching assistant every year by the 2nd respondent. Petitioner would submit that he is being continued each year on a consolidated pay of Rs.5,000/- P.M. though he was selected by a duly constituted selection committee. According to the petitioner there are several vacancies in the Sanskrit department of the University which have not been filled up. According to him, as on date there are two regular teaching assistant posts and one Assistant Professor post available in the department and as against the three vacancies, the University had been sanctioning only one post to be filled up on temporary basis each year wherein the services of the petitioner, on his being selected by the selection committee, were

being utilized by the 2nd respondent. The 1st respondent, vide proceedings dated 06.11.2003, informed the 2nd respondent that hiring the services of one teaching assistant, to undertake teaching from time to time in the department of Sanskrit, was not feasible. As a result the 2nd respondent informed the appellant herein not to take classes. During the year 2003-2004, a three member committee consisting of the Head of the department of Sanskrit, the Principal, S.V. University college of Arts & Sciences and the Dean of the University are said to have recommended the petitioner's name and accordingly the petitioner discharged his duties for the academic year 2003-2004. The petitioner's grievance is that despite having served the University, on a meager consolidated pay, for the last more than 20 years, the 1st respondent instead of regularizing his services or appointing him as a regular Teaching Assistant had dispensed with his services, without assigning any reason. Petitioner would seek regularization of his services as he has been discharging his duties for the last 20 years and is fully qualified to be appointed to the post of teaching assistant.

The respondent-University, in its counter-affidavit, while admitting that the University was hitherto following the practice of entrusting teaching work to available competent persons on a consolidated remuneration for a period of 60-89 days against the existing vacancy position in the departments concerned with a view to cope up with the regular teaching work in the department, would submit that the University had changed the procedure for hiring services of competent persons. According to the new procedure, a committee was to be constituted to scrutinize the

workload of teachers in each department or the number of vacancies that were available whichever was less. The said committee was required to shortlist candidates, who had applied to the post of teaching assistants in the Department, on the basis of their merit giving due representation to women and weaker sections of society. The actual process of selection of teaching assistants was left to the discretion of the committees constituted subject-wise. It is stated that generally the Heads of Departments are permitted to hire the services of competent persons, as recommended by the committee, from the beginning of the academic year i.e., from August only for a period of 60 days and to continue them upto the last working day of the academic year i.e., 30th April with a break of one clear working day for each spell of 60 days. It is emphasized that Heads of Departments are not permitted to hire competent persons in the months of May, June and July as there is no teaching work during summer vacations. It is stated that, if there is workload in the department in a particular academic year, the head of the department is required to conduct interviews afresh and seek administrative sanction enclosing evidence of extra workload in the department. Respondents would submit that the petitioner was engaged as a competent person, that he was not designated as a teaching assistant and that perhaps he might have worked as a competent person from 1995-96 onwards. It is stated that, in accordance with the recommendations of the selection committee, the head of the department of Sanskrit, was permitted to hire the services of one competent person to undertake teaching programmes for the academic year 2003-2004. As per the new procedure in vogue the head of the department, vide letter dated 30.07.2003, had sought

permission, to hire the services of one teaching assistant for the department of Sanskrit, enclosing the minutes of the selection committee meeting held on 29.07.2003. This request was placed before the committee constituted for the purpose of scrutinizing the workload of the department and, after discussions, the committee negatived his request since the committee felt that there was not enough workload justifying the need to hire one competent person and accordingly the head of the department was informed that his request was not feasible to be complied with. On the basis of the representation of the petitioner, in his letter dated 17.01.2004, that since he had taken classes for 1 & III semesters, the University should issue orders for payment of remuneration from August 2003 to December 2003 and that he should be continued as a teaching assistant, and in as much as the head of the department had informed that the petitioner's services were engaged in anticipation of approval, the action of the head of the department in hiring the services of the petitioner, from 01.08.2003 to 07.11.2003, was ratified and orders were issued for payment of remuneration, for the said period, vide proceedings dated 26.03.2004. Respondents would deny the petitioner's contention that he had been discharging his duties from July 2003 onwards for the present academic year and that he has been serving the University for more than 20 years. According to the respondents, at the time of hiring the services of competent persons, it was categorically mentioned that the assignment was purely temporary and the service was not counted as University service. Respondent would state that since no request had been received from the head of the department to appoint the petitioner as a teaching assistant in the department of Sanskrit nor did the

selection committee meet during the academic year 2004-2005, the question of continuing the petitioner for the academic year 2004-2005 did not arise. While admitting that the University had issued a notification on 28.08.2004 inviting applications for two posts of Assistant Professors, one earmarked B.C-B and other for B.C-D-W in the department of Sanskrit, it is stated that mere issuance of a notification cannot be construed to mean that there is additional workload in the department and that there would be no necessity for hiring the services of the teaching assistants when the workload was adjusted with the existing staff and that the petitioner cannot claim appointment as a matter of right.

The learned single judge held that, merely because a notification was given on 28.08.2004, it did not mean that there was additional work in the department. As the workload was adjusted with the existing staff and, at the time of appointing persons on contract basis, the respondent-University had issued appointment orders specifying that the appointment was purely temporary and that the services shall not be counted as University service, the petitioner could not contend that his services were dispensed with without assigning any reason nor could he claim appointment as a matter of right. The learned Single judge took note of the fact that the post of lecturer was a selection post under Section 43 of the A.P. Universities Act and held that, as the petitioner was not selected in accordance with the said statutory provisions, he was not entitled for regularization. The learned single judge observed that an appropriate decision had to be taken by the committee consisting of the Head of the department of Sanskrit, the Principal, S.V. University college of Arts & Sciences

and the Dean of the University, and thereafter candidates would be selected basing on their merit. The learned judge held that since the committee had come to the conclusion that there was no heavy workload in the department and there was no need to appoint persons on contract basis, the petitioners could not claim as of right that he should be appointed, since these were matters of discretion of the University. The writ petition was disposed of directing the respondents to take an appropriate decision depending on the workload and continue the services of the petitioner for every academic year.

Sri V. Jagapathi, learned Counsel for the petitioner would highlight the unfortunate situation in which the petitioner finds himself in. Learned Counsel would submit that the respondents have not denied the fact that the appellant had served the University for more than 20 years from 1983 onwards. Learned Counsel would submit that the appellant is being given a meager salary of Rs.5,000/- per month and even this is sought to be denied from the academic year 2004-2005. Learned Counsel would submit that the contention of the University, that there was inadequate workload, is belied by the fact that the University had issued an advertisement inviting applications to fill up the two posts of Assistant Professors. According to the learned Counsel, if there was no workload to continue the services of petitioner as a teaching assistant, there was no need to invite applications for appointment to the two posts of Assistant Professors in the department of Sanskrit. Learned Counsel would submit that since the appellant was initially appointed, as a teaching assistant, pursuant to his selection by a duly constituted committee and in as much as he is fully qualified to be appointed as a teaching

assistant, he is entitled for regularisation of his services as he has served the University for more than 20 years.

Sri B. Adinarayana Rao, learned Standing Counsel for the respondent-University, on the other hand, would submit that the services of the appellant was engaged periodically based on the work load. Learned Counsel would submit that the exercise of assessment of workload is undertaken each academic year and, based on such assessment of the workload, a duly constituted committee examines the need for appointing teaching assistants for specified durations. Learned standing Counsel would submit that appointment of teaching staff of the University is governed by Section 43 of the A.P. Universities Act and any appointment contrary thereto would be illegal. Learned Standing Counsel would submit that the appellant is not entitled to seek regularisation of his services merely on the ground that his services were intermittently engaged by the respondent-University for the last few years. Learned standing Counsel would rely on **Secretary, State of Karnataka Vs. Umadevi**[1]. Regarding issuance of notification by the University, inviting applications for appointment to the post of Assistant professors in the department of Sanskrit, learned Standing Counsel would submit that, while it is true that the University had issued a notification inviting applications, the University had not taken any action pursuant thereto and no one has been appointed to the said posts of Assistant Professors. Learned Standing Counsel would submit that the present workload does not necessitate appointment of a teaching assistant and that the University does not intend to fill up the posts of Assistant Professors in the department of Sanskrit in the immediate future.

Before examining the rival contentions, it is necessary to take note of Section 43 of the A.P. Universities Act, which reads as under:

43. Constitution of Selection Committee:- (1) There shall be constituted a Selection Committee in regard to the appointment of Professors, (Associate Professors and Assistant Professors) which shall consist of the following, namely,

i. the Vice-Chancellor;

ii. three experts from outside the University to be nominated by the Viet-Chancellor from out of panel prepared every year by the Board of Studies and approved by the Executive Council of whom at least two shall be present in the Selection Committee;

iii. Chairman of the Board of Studies concerned;

iv. Head of the Department;

Provided that no person shall participate in the meetings of the Selection Committee for any appointment if he or his near relative is candidate for that appointment;

Provided further that no teacher holding a post lower in rank than the one to which appointment is to be made, shall be a member of Selection Committee.

(2) The Registrar shall be the Secretary of the Selection Committee.

(3) Provision shall be made in the Statutes in respect of such matters as may be considered necessary and not provided for in sub-sections (1)(2) in order to ensure fair selections.

It is clear therefrom that no appointment of Professors/Associate Professors/Assistant Professors shall be made without constituting a selection committee consisting of the Vice Chancellor, three experts from outside the University, the Chairman of the Board of studies and the Head of department. In view of the statutory prescription in Section 43, the appellant cannot claim regularization of his services as a teaching assistant, since appointment of teaching staff in the respondent University can be made only by way of regular recruitment inviting applications from qualified candidates and subjecting them to a process of selection by the selection committee constituted under Section 43 of the A.P. Universities Act. The question of

regularisation of services was considered in **Umadevi**[1], wherein the Constitution Bench of the Supreme Court held thus:

"…..**While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain – not at arms length – since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible.** If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. **In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.**

When a person enters a temporary employment or gets engagement

as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, causal or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

It was then contended that the rights of the employees thus appointed, under Articles 14 and 16 of the Constitution, are violated. It is stated that the State has treated the employees unfairly by employing them on less than minimum wages and extracting work from them for a pretty long period in comparison with those directly recruited who are getting more wages or salaries for doing similar work. The employees before us were engaged on daily wages in the concerned department on a wage that was made known to them. There is no case that the wage agreed upon was not being paid. Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a p**art with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution.** The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled.

It is contended that the State action in not regularizing the employees was not fair within the framework of the rule of law. The rule of law compels the State to make appointments as envisaged by the Constitution and in the

manner we have indicated earlier. Inmost of these cases, no doubt, the employees had worked for some length of time but this has also been brought about by the pendency of proceedings in Tribunals and courts initiated at the instance of the employees. Moreover, accepting an argument of this nature would mean that the State would be permitted to perpetuate an illegality in the matter of public employment and that would be a negation of the constitutional scheme adopted by us, the people of India. It is therefore not possible to accept the argument that there must be a direction to make permanent all the persons employed on daily wages. **When the court is approached for relief by way of a writ, the court has necessarily to ask itself whether the person before it had any legal right to been forced. Considered in the light of the very clear constitutional scheme, it cannot be said that the employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of the relevant rules or in adherence of Articles 24 and 16 of the Constitution.**

It is argued that in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, the action of the State in not making the employees permanent, would be violative of Articles 21 of the Constitution. But the very argument indicates that there are so many waiting for employment and an equal opportunity for competing for employment and it is in that context that the Constitution as one of its basic features, has included Articles 14, 16 and 309 so as to ensure that public employment is given only in a fair and equitable manner by giving all those who are qualified, an opportunity to seek employment. In the guise of upholding rights under Article 21 of the Constitution of India, a set of persons cannot be preferred over a vast majority of people waiting for an opportunity to compete for State employment. The acceptance of the argument on behalf of the respondents would really negate the rights of the others conferred by Article21 of the Constitution, assuming that we are in a position to hold that the right to employment is also a right coming within the purview of Article 21 of the Constitution. The argument that Article 23 of the Constitution is breached because the employment on daily wages amounts to forced labour, cannot be accepted. After all, the employees accepted the employment at their own volition and with eyes open as to the nature of their employment. The Governments also revised the minimum wages payable from time to time in the light of all relevant circumstances. It also appears to us that importing of these theories to defeat the basic requirement of public employment would defeat the constitutional scheme and the constitutional goal of equality.

The argument that the right to life protected by Article 21 of the Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right to employment can

also be brought in under the concept of right to life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39(a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the courts recognize that an appointment to a post in government service or in the service of its instrumentalities, can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut our eyes to the constitutional scheme and the right of the numerous as against the few who are before the court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Pat III of the Constitution and the obligation of the State tone and all and not to a particular group of citizens. We, therefore, overrule the argument based on Article 21 of the Constitution……" (emphasis supplied)

In view of the law laid down by the Constitution Bench of the Apex Court in **Umadevi**[1], no mandamus can be issued to the respondent-University to absorb the appellant or to regularize his services or to allow him to continue in service since neither does he have a legal right nor is a legal duty cast on the respondent University in this regard.

While the contention of Sri V. Jagapathi, learned Counsel for the petitioner, that inviting applications for appointment to two posts of Assistant Professors would itself show that there is adequate workload, cannot be said to be without merit, in view of the submission of Sri B. Adinarayana Rao, learned Standing Counsel of the respondent University, that no action has been taken by the University to appoint Assistant Professors in the department of Sanskrit pursuant to the advertisement issued and

that the said posts of Assistant Professors would not be filled up in the immediate future, question does not call for further examination. Suffice to note that mere issuance of an advertisement would not confer any right on the appellant herein to claim absorption or regularization of his services or even for his continuance in service on a temporary basis.

The order of the learned single judge, in directing the respondents to take an appropriate decision depending upon the workload and continue the services of the appellant for every academic year, does not call for interference at the instance of the appellant herein. The writ appeal fails and is accordingly dismissed. However, in the circumstances, without costs.

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B.PRAKASH RAO, J

Date: -06-2006

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RAMESH RANGANATHAN, J

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[1] 2006(1) Decisions Today SC 493